



Exempt Action Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary action: 9VAC5 Chapter 240, Variance for Open Burning
Regulation title	Variance for Open Burning
Action title	Repeal of Variance for Open Burning (Revision I11)
Document preparation date	March 26, 2012

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 A of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

On March 26, 2007 the board issued a variance (9VAC5 Chapter 240) to provide relief to Gloucester County residents from the regulatory seasonal restrictions on open burning. That variance expired on December 31, 2008. The expired variance still exists as regulation. In order for the state regulations to be administratively correct, 9VAC5-240 must now be repealed.

Statement of final agency action

Please provide a statement of the final action taken by the agency, including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On March 23, 2012, the State Air Pollution Control Board took final action to adopt amendments repealing a regulation entitled "Variance for Open Burning," specifically, 9VAC5 Chapter 240. This regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from §§ 2.2-4007 through 2.2-4007.06, 2.2-4013, 2.2-4014, and 2.2-4015 of the Administrative Process Act. Under §2.2-4016, a regulation may be repealed after its effective date only in accordance with the provisions of the Administrative Process Act that governs the adoption of regulations. Sections 2.2-4007.07, 2.2-4013 E, 2.2-4014 D, and 2.2-4015 C of the Administrative Process Act provide that these sections shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

No changes were made to the text of the proposal since its publication.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

No comments were received during the public comment period following publication of the proposal.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC5 Chapter 240			
240-10		Applicability and designation of affected persons.	Repeal. Provisions are no longer effective.
240-20		Definitions.	Repeal. Provisions are no longer effective.
240-30		Permissible open burning.	Repeal. Provisions are no longer effective.
240-40		Compliance.	Repeal. Provisions are no longer effective.
240-50		Applicability of future regulation amendments.	Repeal. Provisions are no longer effective.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

With the repeal of 9VAC5 Chapter 240, the effective open burning regulation (9VAC5 Chapter 130) still meets all of the minimum requirements of the federal Clean Air Act and does not differ materially from the pertinent state and federal regulations. A failure to repeal any portion of 9VAC5 Chapter 240 could lead to confusion on the part of regulated businesses, individuals, and communities and would compromise the effectiveness of the open burning requirements in protecting the health and welfare of the public.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

It is not anticipated that these regulation amendments will have a direct impact on families.

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